

Application No. 08/484,928
Amendment dated August 25, 2003
Reply to Office Action of February 24, 2003

REMARKS

Applicant cancelled claim 316, amended claims 173, 197, 198, 222, 223, 245, 246, 263, 265, 266, 288, 290, 291, 298, 300, 301, 308, 309, 313, 314, 317, 319, 320, 327, 329, 330, and 335, and added claims 336-369 to further define Applicant's claimed invention.

In the Office Action, the Examiner allowed claims 173-199, 201-228, 231-233, 235-252, 255-272, 275-277, 279-293, and 295-300.

The Examiner objected to the specification under 35 U.S.C. § 132 because it introduces new matter into the disclosure; specifically, the paragraph bridging pages 9 and 10. Applicant respectfully traverses the objection. Applicant submits that support for an insertion end being larger than a trailing end may be found at least in claim 30 as originally filed. MPEP § 2163 (I) states that "[I]t is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification." (MPEP § 2163(I), page 2100-159, col. 2 (February 2003)).

The Examiner objected to claim 301 for a minor informality. Applicant amended claim 301 as suggested by the Examiner.

The Examiner rejected claims 301-304 and 306-308 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,950,296 to McIntyre. Claim 301, as now amended, recites an implant "being formed of a mesh-like material other than bone." McIntyre teaches a dowel body 12 sized to receive a plug 20. Both body 12 and plug 20 are obtained from bones of the human body. (McIntyre, col. 2, lines 53-63). McIntyre does not teach or suggest an implant formed of a mesh-like material other than bone as recited in independent claim 301.

The Examiner also rejected claims 305 and 330-333 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,906,550 to Rostoker et al. Applicant respectfully traverses the rejection. Independent claims 301 and 330 recite a spinal fusion implant for insertion across the surgically corrected height of a disc space between adjacent vertebral bodies of a human spine. Rostoker et al. teach a hip joint

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prosthesis having tubular segments 28a through 28e. (Rostoker et al., col. 3, lines 8-11 and 21-23, and Fig. 1). Rostoker et al. do not teach or suggest an implant capable of insertion in the spine as recited in independent claims 301 and 330. The prosthesis of Rostoker et al. is not properly dimensioned in either diameter or length for insertion into the spine. Accordingly, Applicant submits that independent claims 301 and 330 are allowable over Rostoker et al. and that claims 331-333 are allowable at least due to their dependency from an allowable independent claim, or claims dependent therefrom.

The Examiner also rejected claims 309, 310, 314-320, and 324-329 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,683,463 to Godefroy et al. in view of U.S. Patent No. 4,878,915 to Brantigan and U.S. Patent No. 5,906,616 to Pavlov et al. Independent claim 309 recites an implant having bone engaging projections, the bone engaging projections "having a maximum height as measured from each of said arcuate portions that increases from one of said ends to the other of said ends along at least a portion of the length of said body." Independent claim 320 recites an implant including bone engaging projections, the bone engaging projections "having a distance between said arcuate portions and said outer surface of said body that increases from one of said ends to the other of said ends along at least a portion of the length of said body."

Godefroy et al. teach an implant having annular ribs 13, 14, and 16. (Godefroy et al., col. 2, lines 58-61, and Fig. 6). Brantigan teaches a prosthetic device having longitudinally spaced circular ribs 32b. (Brantigan, col. 6, lines 30-34, and Fig. 8). Pavlov et al. teach a fusion cage 20 having a thread 40. (Pavlov et al., col. 5, lines 10-14, and Fig. 1). None of Godefroy et al., Brantigan, and Pavlov et al., whether alone or in proper combination, teach or suggest a relationship between bone engaging projections and an implant body as recited in independent claims 309 and 320.

The Examiner also rejected claims 313 and 323 under 35 U.S.C. § 103(a) as being unpatentable over Godefroy et al. in view of U.S. Patent No. 4,693,721 to Ducheyne; and claims 334 and 335 under 35 U.S.C. § 103(a) as being unpatentable

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over Rostoker et al. in view of U.S. Patent No. 5,273,964 to Lemons. Applicant submits that the rejections over claims 313, 323, 334, and 335 are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Accordingly, Applicant submits that independent claims 301, 309, 320, and 330 are allowable and that dependent claims 302-308, 310, 313, 314, 315, 317-319, 323-329, and 331-335 dependent from one of independent claims 301, 309, 320, and 330, or the claims dependent therefrom, are allowable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

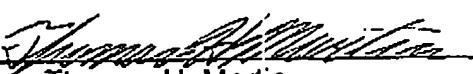
To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted

MARTIN & FERRARO, LLP

OFFICE

Dated: August 25, 2003

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